
(2015) 09 PAT CK 0008

In the Patna High Court

Case No : Criminal Appeal (DB) Nos. 139 and 233 of 1993

Baleshwar Prasad Yadav and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 109, 148, 149, 302

Citation : (2015) 09 PAT CK 0008

Hon'ble Judges : V.N. Sinha, J;Jitendra Mohan Sharma, J

Bench : Division Bench

Advocate : Krishna Mohan and Praveen Kumar, for the Appellant; A.K. Sinha and Ajay Mishra, APPs, Advocates for the Respondent

Judgement

V.N. Sinha, J—Learned counsel for the appellants is permitted to correct the name of appellant No. 9 in paragraph No. 2 of supplementary affidavit, dated 06.02.2015, filed in Cr. Appeal (DB) No. 139 of 1993.

2. These two appeals arise out of judgment dated 17.03.1993 passed by 2nd Additional Sessions Judge, Bhagalpur in Sessions Trial No. 664 of 1990 whereunder all the appellants in Cr. Appeal (DB) No. 139 of 1993 have been convicted for the offence under Section 302/149 of the penal code and directed to suffer rigorous imprisonment for life. Appellant Awadh Kishore Yadav has further been convicted for the offence under Section 109 of the penal code but no separate sentence has been awarded thereunder. Out of the aforesaid 9 appellants of Cr. Appeal (DB) No. 139 of 1993 accused No. 2, 4, and 7, namely, Phulkit Yadav @ Pulkit Yadav, Awadh Kishore Yadav and Heera Yadav have left for heavenly abode as would appear from the supplementary affidavit dated 16.02.2015 filed on behalf of the appellants duly affirmed by Anita Devi wife of Sikandar Yadav sister of Nikhil Yadav appellant in the connected appeal. Death certificate of accused No. 2, 4 and 7 having not been annexed with the supplementary affidavit, may not be safe for us to rely on the same and to

conclude that aforesaid accused No. 2, 4 and 7 have died and their appeal is abated. In the connected criminal appeal accused No. 10 Nikhil Yadav the sole appellant has been convicted for the offence under Sections 302, 148 of the penal code and sentenced to suffer rigorous imprisonment for life and two years respectively. Both the sentences have been directed to run concurrently.

3. Prosecution case as set out in the fardbeyan of Surya Narayan Yadav resident of village Latra, P.S.-Gopalpur, District Bhagalpur recorded by Sub-Inspector of Police C.N. Jha of Naugachia Police Station in Sub-divisional Hospital, Naugachia on 13.03.1988 at 12:00 noon is that on the same day in the morning around 9:00 am he along with his brother Mahendra Yadav and the deceased Surendra Yadav was informed by nephew Bipin Yadav son of the deceased Surendra Yadav that Nikhil Yadav and others named in the fardbeyan are uprooting peanut crop from their field which is at a distance of about one mile from the village in Hajipur Milki outer area of the village with the help of labourers. After receiving the information, informant and his brother deceased Surendra Yadav, Mahendra Yadav proceeded to the field accompanied by co-villagers Motil Lal Yadav, Bira Yadav and others reached the field around 10:00 am and saw Nikhil Yadav and 9 others along with 15-20 were standing on the field and the labourers were uprooting the crop. Surendra Yadav asked Awadh Kishore Yadav as to why his peanut crop was being uprooted, meanwhile, the accused persons surrounded the informant and his brother and on the instruction of Awadh Kishore Yadav, Nikhil Yadav shot Surendra Yadav with country made gun which caused injury on the right side of his chest, leading to his fall, bleeding. Informant was also attacked by accused Prabha Yadav son of Awadh Kishore Yadav with lathi on his head and back causing head injury from which blood was also oozing. Later the accused persons and the labourers fled away from the field. Informant and others brought the injured Surendra Yadav to campus of Latra High School where they arranged a minibus in which Surendra Yadav was brought to Naugachia Hospital and recorded the fardbeyan. In the fardbeyan the informant also disclosed the motive behind the occurrence that Surendra Yadav purchased one bigha land in Hajipur Milki outer area from one Professor Saheb of Deoghar, the accused persons also wanted to purchase the same land situate adjacent to his land but as the land was purchased by Surendra Yadav, Nikhil Yadav and others became aggrieved with the conduct of Surendra Yadav and the present occurrence has been effected by them. In the fardbeyan informant also stated that Surendra Yadav succumbed to the injury while he was being carried to the hospital in the mini bus. Informant also stated that the fardbeyan statement has been read over to him and after understanding its contents, he put his signature over the same in presence of two witnesses, namely, Mahendra Yadav and Mahavir Yadav. The Officer-in-charge Naugachia Police Station forwarded the fardbeyan to Gopalpur Police Station for necessary action. In the light of fardbeyan, Officer-in-charge Gopalpur Police Station registered formal first information report vide Gopalpur P.S. Case No. 22 of 1988 dated 13.03.1988 at 18.45 hours against Nikhil Yadav and others and took up the investigation. The

first information report was dispatched through special messenger to the court of A.C.J.M., Naugachia on 14.03.1988, however, the same reached to the court of A.C.J.M., Naugachia on 16.03.1988. The inquest over the dead body of Surendra Yadav was conducted by Assistant Sub-Inspector of Police Ambika Prasad Singh in the campus of Naugachia Sub-divisional Hospital on 13.03.1988 at 12:30 pm in presence of two witnesses, namely, Mahendra Prasad Yadav and Arvind Kumar Yadav. Perusal of the inquest report (Ext. 10) indicate that Surendra Prasad Yadav was killed inflicting gunshot injury. Post mortem report of the deceased Surendra Prasad Yadav (Ext. 8), conducted by Dr. Ramchandra Prasad, Medical Officer, Naugachia Sub-divisional Hospital on 13.03.1988 at 4:00 pm, indicate that he was killed by gunshot wound leading to hemorrhage, shock. Time elapsed between the post mortem and death of Surendra Prasad Yadav is within 24 hours. The bullet was also extracted from the body and sealed. It appears from column No. 21 of the post mortem report that undigested food was found in the stomach of deceased Surendra Prasad Yadav. The scribe of the fardbeyan forwarded the fardbeyan of Surya Narayan Yadav to Gopalpur Police Station through Naugachia Police Station as the place of occurrence lies in the jurisdiction of Gopalpur Police Station. During investigation of the case, informant and witnesses supported the version stated in the fardbeyan. In the light of the fardbeyan, police statement of the informant and other witnesses named in the fardbeyan as also the contents of the inquest, post mortem report, the third investigating officer of the case Upendra Narayan Singh submitted chargesheet against ten accused persons named in the fardbeyan. After submission of the chargesheet cognizance for the offence found true during investigation was taken, police paper was supplied to the accused persons and case committed to the court of Sessions. The Sessions court under order dated 11.07.1991 framed charge against ten accused persons, they pleaded not guilty and claimed to be tried.

4. During trial prosecution examined as many as 12 witnesses. PWs 1 and 2 are the co-villager and brother of the deceased Surendra Yadav and named in the fardbeyan as eye witness of the occurrence as both of them also came along with the informant and deceased to the place of occurrence. PW 3 Bipin Kumar Yadav is the son of the deceased and nephew of the informant who came from the place of occurrence after having seen the accused persons uprooting the crop and informed the deceased, informant (PW 4), PWs 1 and 2 about the conduct of the accused persons that they were uprooting the crop, went along with the deceased and informant to the place of occurrence to restrain the accused persons from uprooting the crop. PW 5 Digambar Thakur is a formal witness and he is said to be the author of deed of cancellation executed by Nageshwar Singh. PW 6 Vinodanand Choudhary is also a formal witness as he has proved the sale deed executed by Ramashankar Prasad in favour of deceased Surendra Prasad Yadav over which Vinodanand Choudhary is a witness. PW 7 Moti Lal Yadav is a co-villager and eye witness of the occurrence as he also accompanied the informant and deceased to the place of occurrence after receiving the

information that accused persons were uprooting the peanut crop. PW 8 Dr. Ira Jha examined informant on the date of occurrence in Naugachia Sub-divisional Hospital. PW 9 Brajnandan Choudhary deed writer is a formal witless as he has also proved the sale deed. PW 10 Chandra Nand Jha Sub-Inspector of Police Naugachia Police Station is scribe of the fardbeyan. PW 11 Dr. Ramchandra Prasad conducted post mortem on the dead body of Surendra Yadav at Naugachia Sub-divisional Hospital. PW 12 Ram Narayan Singh served as Officer-in-charge of Gopalpur Police Station on 13.03.1988, registered the formal first information report of the present case and also conducted initial investigation of the case, inspected the place of occurrence, seized incriminating articles including blood stained soil from the place of occurrence.

5. Accused persons also examined as many as 5 defence witnesses. DW 1 Niranjan Sharma and DW 2 Dhurki Yadav, PW 3 Kare Lal Yadav have been examined to suggest that the land in question was in possession of Nikhil Yadav and he had sown wheat, gram crop over the same which was being forcibly harvested by the deceased, informant and other members of the prosecution party. DW 2 further stated that Nikhil Yadav and his men protested such forcible harvest of the wheat, gram crop from the land in question which was resisted by the members of the prosecution party and the men assisting the prosecution party resorted to firing which caused injury to Surendra Prasad Yadav. DW 4 Sukhdeo Prasad Panja has proved the rent receipts, DW 5 Awadh Kishore Singh has also come forward to depose about the possession of the accused persons over the land in question.

6. Learned counsel for the appellants submitted that as per the prosecution case, on 13.03.1988 around 9:00 am, the informant (PW 4), his brother deceased Surendra Prasad Yadav and another brother Mahendra Yadav (PW 2) were at their residence. PW 3 Bipin Kumar Yadav son of deceased Surendra Prasad Yadav came from Hajipur Milki outer area and informed PW 4 the informant and his father Surendra Prasad Yadav (deceased) that accused persons were forcibly uprooting the crop of peanuts (gram) from their field situate in Hajipur Milki outer area. Informant, his brother deceased Surendra Prasad Yadav and Mahendra Yadav (PW 2) having learnt about the forcible harvest proceeded to Hajipur Milki outer area along with co-villager PW 1 Biran Prasad Yadav and PW 7 Motil Lal Yadav, reaching Hajipur Milki outer area around 10:00 am saw the accused persons standing and their labourers forcibly harvesting/uprooting the gram/peanut crops, asked Nikhil Yadav to restrain his labourers from doing so. Nikhil Yadav on the orders of Awadh Kishore Yadav shot Surendra Prasad Yadav from his gun which led to his fall, other accused persons led by Awadh Kishore Yadav assaulted the informant with lathi and fled away. Prosecution witnesses brought Surendra Yadav to the campus of village high school and after arranging a minibus proceeded to Naugachia Hospital but on way to hospital Surendra Prasad Yadav succumbed to the injury. It is submitted that the evidence of prosecution witnesses, namely, PW 4 informant, PW 2 Mahendra Yadav, PW 3 the brother and son of the deceased is required to be examined with caution. In this

connection, learned counsel for the appellants referred to the evidence of PW 7 Moti Lal Yadav who also accompanied the informant, deceased, PW2 and PW 3 to Hajipur Milki outer area where the occurrence took place around 10:00 am. It is submitted that PW 7 though accompanied PWs, 4, 2, 3 to the place of occurrence and in his presence occurrence took place but from the contents of his deposition it will not appear that he is an eye witness of the occurrence rather has learnt about the same.

7. In the light of the evidence of PW 7, learned counsel for the appellants submitted that PWs 2, 3, and 4 being closely related to the deceased, their testimony is required to be ignored and, as PW 7 has not specifically stated that he saw Nikhil Yadav shooting Surendra Prasad Yadav, he may not be held to be his assailant. It is further submitted that PW 7 has also not stated about the assault on the person of the informant by Awadh Kishore Yadav and others, as such, their presence at the place of occurrence itself is doubtful.

8. Learned counsel for the State, on the other hand, supported the judgment and submitted that the criticism to the evidence of members of prosecution party on the ground of delay in reaching the first information report to the court as also about assault by Nikhil Yadav on the person of Surendra Prasad Yadav cannot be questioned in view of the defence evidence itself. In this connection, he pointed out the evidence of DWs 2, 3 and submitted that the defence witnesses having themselves admitted the occurrence, there cannot be any reason to dispute the occurrence on the ground of delay in receipt of the first information in the court. In this connection, he further pointed out from the evidence of DWs 2 and 3 that both have categorically deposed that Surendra was shot at the place of occurrence, as claimed by the prosecution but receiving gunshot accidentally from his own men but pointed out that such claim of the defence witnesses does not appear to be correct as has been found by the trial court in view of the medical evidence that Surendra Prasad Yadav received gunshot injury from front on right side of his chest.

9. In view of the rival submissions, we have considered the evidence of informant (PW 4), his brother PW 2 and their nephew PW 3 the son of the deceased who initially informed the deceased, informant and his brother about uprooting of the peanut (gram) crop in their field situate in Hajipur Milki outer area by the accused persons, whereafter, deceased, informant, PW 2 and PW 3 went to Hajipur Milki outer area. The deceased attempted to restrain the accused persons from uprooting the crop and was shot by appellant Nikhil Yadav. The evidence of aforesaid witnesses is duly corroborated by an independent witness, namely, PW 1 who also accompanied the deceased, informant, PW 2 and PW 3 to Hajipur Milki outer area and saw Surendra being shot by Nikhil Yadav. The evidence of PW 7 about the occurrence may not persuade us to disbelieve the evidence of informant, PW 2 and PW 3 which is fully corroborated in all material particulars by PW 1 an independent eye witness of the occurrence. In view of the finding above, we have no option but to hold that Nikhil Yadav is the assailant of

Surendra Yadav as he inflicted firearm injury on his chest.

10. Learned counsel for the appellant Nikhil Yadav, then submitted that from statement of Nikhil Yadav recorded under Section 313 of the Cr.P.C. which is at page 83 of the paper book, it will appear that on the date of his statement i.e. 25.11.1992 Nikhil Yadav disclosed his age as 20 years and thereby his age on the date of occurrence i.e. 13.03.1988 is 15 years and 4 months and submitted that he being a juvenile on the date of occurrence could not be tried along with adults and his conviction is without jurisdiction. Such submission has no merit, in view of the assessment of age made by the trial court as 23 years on the date of his statement recorded under Section 313 of the Cr.P.C. by which estimation of his age on the date of occurrence would be more than 18 years i.e. 18 years 3 months and 18 days as such trial/conviction of Nikhil Yadav is justified.

11. Accordingly, Cr. Appeal (DB) No. 233 of 1993 filed on behalf of appellant Nikhil Yadav is dismissed. He was released on bail by this Court under order dated 23.05.1996 after he remained in jail custody for more than 8 years, in the circumstances he is directed to surrender in the court below forthwith to serve out remaining sentence.

12. The appellants of Cr. Appeal (DB) No. 139 of 1993 i.e. accused No. 1 to 9 in the trial having not been attributed with the overt act of assault on the person of Surendra Prasad Yadav, it is difficult for us to maintain their conviction under Section 302/149 and of Awadh Kishore Yadav for the offence under Section 109 of the penal code. Cr. Appeal (DB) No. 139 of 1993 filed by accused No. 1 to 9 is allowed by giving them benefit of doubt. Accused No. 1 to 9 having been released on bail during the pendency of the appeal are discharged from the liabilities of their bail bonds.